U.S. Department of Labor Office of Administrative Law Judges
Washington, DC

In the Matter of

MOLINE UNIT SCHOOL DISTRICT #40
Moline, Illinois,

and

ILLINOIS STATE BOARD OF EDUCATION
Springfield, Illinois,
Respondents

Date Issued: NOV 19 1985

Case No. 84-ESA-1000

Docket No. 840-504-7

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For the Office of Civil Rights

Before: GLENN ROBERT LAWRENCE
Administrative Law Judge

DECISION AND ORDER

This is a proceeding initiated by the Office for Civil Rights (OCR) of the United States Department of Education to determine the compliance of Respondents Moline Unit School District No. 40 (School District) and Illinois State Board of Education (Board of Education) under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (1984).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statement of the Case

The Moline Unit School District No. 40 is a body corporate, organized and existing under the laws of the State of Illinois and is vested with the general management and control of the

elementary and secondary public schools within its jurisdiction. The Board of Education exercises general supervision over the.2 public schools of Illinois, including those under the management of the School District and is the State Education Agency for the purpose of receiving, administering, and disbursing funds granted to Illinois by the Federal Government for education purposes under the various acts of Congress.

The School District is receiving, has received, or has applied for federal financial assistance under the following statutes administered by the Department of Education:

1. School Assistance in Federally Affected Areas (SAFA), 20 U.S.C. §236 et seq. (P.L. 81-874);

2. Education of the Handicapped Act (EHA), Part B, 20 U.S.C. §1411 et seq. (P.L. 94-142);

3. Education Consolidation and Improvement Act (ECIA), 20 U.S.C. §3801 et seq. (Chapter I);

4. Education Consolidation and Improvement Act (ECIA), 20 U.S.C. §3811 et seq. (Chapter II);

5. Vocational Education Act (VEA), 20 U.S.C. §2301 et seq. (G 23).

On November 28, 1977, the School District signed an Assurance of Compliance whereby in exchange for federal financial assistance, it contractually agreed to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 and the applicable regulations, including 34 C.F.R. § 100.6. (G 3; G 21). In November 1982 the Office for Civil Rights of the Department of Education received a complaint alleging that the School District had retaliated against Mrs. Pat Caldwell by failing to reemploy her as a substitute teacher because she had previously filed complaints against the School District. (G 3). Mrs. Caldwell is not a tenured teacher in the School District. The complaint was transferred to OCR from the United States Department of Labor, Office of Federal Contract Compliance Programs, which lacked jurisdiction over the matter.

In her complaint, Mrs. Caldwell alleged that she had been advised as of August 30, 1982, that she would not be eligible to serve as a substitute teacher during the 1982-1983 academic year because she had been "blacklisted." Although the complaint did not identify the sources of the allegations (R l-l0), it identified Mrs. Caldwell as the injured party and the School District as the institution that discriminated against her, and it described the alleged discrimination in some detail. Consequently, OCR believed it had enough information to begin an investigation. (G 3).

The requirements for a complaint are listed in Adams v. Bennett, C. V. Nos. 3095-70 and 74-1720 (March 11, 1983) (Adams Order). They also have been incorporated into the Investigation Procedures Manual (IPM) used by OCR. (G 1, 2). Under standards set forth in the

IPM and the Adams Order, OCR must investigate all complete complaints. (G 1; 2). The standards set forth in the Adams Order and the IPM state that a complete complaint is one that:

(1) identifies the complainant by name and address;

(2) generally identifies or describes those injured by the alleged discrimination;

(3) identifies the affected institution or individual alleged to have discriminated in sufficient detail to inform the Office for Civil Rights what discrimination occurred and when it occurred to permit ED to commence and investigation;

(4) is in writing and signed.

(G 1, 2).

Following the Adams Order Standards, OCR determined that Mrs. Caldwell's complaint was complete. (G 24, at 4-5). At the time of filing, OCR was aware of previously filed complaints against the School District by Mrs. Caldwell, and findings had been made in favor of the School District as to those complaints. (R l-5, 1-18). Mrs. Caldwell and her husband had instituted another action against the School District in the Rock Island County Circuit Court, seeking a temporary restraining order to prevent the issuance of a failing grade in mathematics for their daughter, Jennifer Lynn Caldwell, and to enjoin the School District against recording the grade in their daughter 's student records. Mrs. Caldwell had also instituted an action alleging various illegal acts and seeking an injunction against both Respondents in this proceeding.

Consequently, an adversarial environment developed between Mrs. Caldwell and the School District because of her previously filed complaints. (T 493).

OCR requested information pertaining to Mrs. Caldwell's retaliation allegations from the School District on December 15, 1982, and subsequently revised this request on March 17, 1983, and again on August 31, 1983. (R 1-19, l-26, l-42). On March 17, 1983, OCR acknowledged orally and in writing that although the School District had provided substantial evidence, "a minimal amount of data is still needed for OCR to complete this investigation." (R l-26).

On July 27, 1983, the Regional Director of OCR called Dr. T. F. Rockafellow to discuss the case and to request information that would permit OCR to complete its investigation. (Dep Mines 24, 67) (R l-41). On August 31, 1983, OCR issued its revised request to the School District, including nine paragraphs of information drawn from earlier requests and the investigative plan, omitting any reference to personal interview requests. (R l-42). On September 6, 1983, the Regional Director confirmed by interoffice memorandum that an on-site visit was anticipated to obtain necessary interviews. This determination had not been disclosed to the School District in the phone conference and the August 31 data request. (R 1-41, 42, 43) (T 48). In all, OCR had made nine separate requests for information that it determined to be "reasonably relevant" to the complaint. (G4-G 13).

On September 14, 1983, the School District submitted its written response to the August 31 request. (R l-44). Although OCR stated that it was willing to limit its investigation to what it considered to be a reasonable size and to prevent tying up the resources of the School District indefinitely (T 21), it determined that the information contained in the September 14 response was insufficient to make a finding in the case. (Dep. Mines 77; T 144; G 24).

Consequently, on October 11, 1983, OCR further requested answers to five questions and also requested 17 interviews. (G 11 - G 24). The 17 individuals sought to be interviewed included school board members, a district superintendent, a director of personnel, district principals, administrators, and teachers. OCR sought to interview 13 of these 17 individuals to attempt to verify certain of the School District's unsupported assertions. (G 24). The five questions involved certain records of substitute teaching, the agenda of a substitute teacher screening meeting, copies of written evaluation of Mrs. Caldwell and certain other individuals, the reasons for decisions to omit certain teachers from the substitute teacher list, and the weight attached to five criteria in evaluating substitute teachers.

When the School District refused to provide OCR access to those individuals OCR sought to interview (G 19; C 20), OCR reduced the number of persons to be interviewed from seventeen to four. (G 13). The School District, however, continued to refuse to provide access to the information that OCR stated was necessary to investigate the complaint filed by Mrs. Caldwell. Answer to Notice, paragraphs 5 and 28; G 24).

Discussion

OCR properly assumed jurisdiction over the subject matter of this proceeding. 34 C.F.R. Part 104. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq., and its implementing regulations, 34 C.F.R. Part 104, including §§100.6 - 100.10, which are incorporated by reference, require OCR to make a prompt investigation whenever a complaint or any other information indicates a possible failure to comply with the regulations. 34 C.F.R. §100.7(c)

Under standards set forth in the IPM and the Adams Order, OCR may refuse to investigate Only patently frivolous complaints and incomplete complaints. (G 1, 2). A patently frivolous complaint is one that is so weak and unsubstantial as to be absolutely void of merit on its face. (G 2). OCR determined the Caldwell complaint to be complete and not patently frivolous, and therefore, was obligated by the Adams Order and by its own procedures, as set forth in the IPM, to investigate the complaint. (G 1; G 2).

Furthermore, OCR has the discretion to promulgate its own regulations and procedures for the conduct of its investigations. Under these regulations and procedures OCR is not required to "pre-screen" a complaint prior to initiating an investigation. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794; 34 C.F.R. Part 104; Adams Order; Investigation Procedures Manual.

The Act and the regulations also require recipients of federal financial assistance to provide access to information that may be pertinent to ascertain compliance. 34 C.F.R. §§100.6(c). U.S. v. Phoenix Union High School Dist., 681 F.2d 1235 (9th Cir. 1982); U.S. v. El Camino Community College Dist., 600 F.2d 1258 (9th Cir. 1979; Camden County School Dist. v. Bell, No. 281-40 (S.D. Ga .April 7, 1981).

An administrative agency, such as the Department of Education's Office for Civil Rights, is entitled to great breadth in conducting an investigation, and requests for information need only be "reasonably relevant" to the purpose of investigation. United States v. Morton Salt, 338 U.S. 632 (1950); U.S. v. Phoenix Union High School, Dist., 681 F.2d 1235 (9th Cir. 1982); U.S. v. El Camino Community College Dist., 600 F.2d. 1258 (9th Cir. 1979); FTC v. Anderson, 631 F.2d 741 (D.C. Cir. 1979).

I find the data requests made by OCR in investigating the Caldwell Complaint to be "reasonably relevant" to the issue of compliance with Section 504 and the regulations. Although the School District has responded in a reasonable manner to many of OCR's requests for information, written and oral, its refusal to allow four persons to be interviewed and to provide answers to the five questions asked by OCR must result in a finding of non-compliance if the School District continues in its refusal. Further, although significant information was elicited during the testimony of Dr. Theodore F. Rockafellow, the District Superintendent, OCR is still entitled to the information it requested in the form of four interviews and five interrogatory answers.

It is true that the time spent by administrators for the School District with respect to the various investigations prompted by complaints filed by Mrs. Caldwell has cost the School District's taxpayers a substantial amount of money and lost staff time. Dr. Rockafellow testified that he spent 40.6 percent of his time during 1981 and the spring of 1982 handling these complaints. (T 470, 471, 486). Nevertheless, the burden imposed upon a recipient by a data request is not a basis for the recipient to refuse to provide OCR with requested information. El Camino Community College, supra; Accord, United States v. Morton Salt, supra.

Thus, the School District currently is in violation of 34 C.F.R. §100.6(c) for its refusal to provide OCR access to "reasonable relevant" information necessary to investigate a complaint of discrimination. Phoenix Union High School, supra; Phoenix Camino Community College, supra. Because It has refused to comply with 34 C.F.R. §100.6(c), it will not be eligible to receive federal financial assistance unless it complies within the terms of this Order. See 34 C.F.R. §100.10.

The interviewing of the four individuals selected by OCR (G 13) and responses to the five questions asked by OCR (G 11, G 24), together with the School District's September 14, 1983 response and the testimony of Mrs. Caldwell and Dr. T. F. Rockafellow, will sufficiently fulfill the compliance requirements imposed upon the School District by virtue of its receipt of federal financial assistance and will meet the burden of the School District imposed by 34 C.F.R. Part 104 for furnishing information to assure compliance with Section 504.

ORDER

1. Unless the Respondent School District complies with Section 504 of the Rehabilitation Act of 1973 and its regulations, by allowing the interviewing of the four individuals previously selected by OCR and by responding to the five questions submitted by OCR on or before thirty days from the effective date of the final order (paragraph 3 below):[1]

a. Federal financial assistance administered by the Department of Education under the following authorizations is to be terminated and refused to be granted to Respondent School District:

(1) School Assistance in Federally Affected Areas (SAFA), 20 U.S.C. §236 et seq. (P.L. 81-874);

(2) Education of the Handicapped Act (EHA), Part B, 20 U.S.C. §1411 et seq. (P.L. 94-142);

(3) Education Consolidation and Improvement Act (ECIA), 20 U.S.C. §3801 et seq. (Chapter I);

(4) Education Consolidation and Improvement Act (ECIA), 20 U.S.C. §3811 et seq. (Chapter II);

(5) Vocational Education Act (VEA), 20 U.S.C. §2301 et seq.

(b) Additional federal financial assistance for which Respondent School District may be eligible to receive, either from the Department of Education or through the State of Illinois, shall not be granted.

2. This termination and refusal to grant or continue federal financial assistance shall remain in force until Respondent School District corrects its noncompliance with Section 504 of the Rehabilitation Act of 1973 and satisfies the Responsible Departmental Official that it is in compliance.

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[1] It may be argued that the administrative law judge has no discretion to stay the order 30 days and to "fashion a remedy" in this manner. However, the remedial powers of an agency officer, though limited to carrying out the statutory policies, of the applicable Act, are broad. See H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970). Further, Congress intended termination of federal funding to any program or activity only as a last resort after all steps in the administrative process to enforce the statute proscribing discrimination have been exhausted. Client's Council v. Pierce, 532 F. Supp. 563, rev'd 711 F.2d 1406 (D.C. Ark. 1982).

3. This Initial Decision and Order shall become final unless, within twenty (20) days after mailing the Initial Decision and Order, either party submits exceptions to the Civil Rights Reviewing Authority in accordance with 34 C.F.R. §§101.103-104.

GLENN ROBERT LAWRENCE
Administrative Law Judge

Dated: Nov. 19, 1985
Washington, D.C.

GRL:kj:crg